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2 ATTORNEY AT LAW
3 SECURITY PACIFIC PLAZA
4 1200 THIRD AVENUE, SUITE 1700
5 SAN DIEGO, CALIFORNIA 92101
6 (714) 259-1700

7 FEB 14 1980
8 APR 22 1980
9 C.P. 7-1004-1
10

11 Attorney for Plaintiff

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN DIEGO

14 CINEMATRONICS, INC.,)
15 a California Corporation,)
16 Plaintiff,) CASE NO. 451437
17 vs.) DECLARATION OF JIM
18 VECTORBEAM, a California) PIERCE IN SUPPORT OF
19 Corporation; EXIDY, INCORPORATED,) APPLICATION FOR
20 a California Corporation;) TEMPORARY RESTRAINING
21 and DOES I through X, inclusive.) ORDER
22 Defendants.)
23

24 I, JIM PIERCE, declare that if called as a witness I could
25 competently testify of my own personal knowledge as to the
26 following facts:

27 1. I am the President of plaintiff CINEMATRONICS, INC.
28 and am therefore familiar with the facts and circumstances
surrounding the above-captioned case;

29 2. Defendant VECTORBEAM is a wholly-owned subsidiary of
30 defendant EXIDY INCORPORATED;

31 3. The major stockholders of CINEMATRONICS, INC. are
32 possessed of certain United States Patents relating to a
33 vector generating system known as the "Rosenthal System" and
34

1 the right to commercialize that system was licensed to plaintiff
2 CINEMATRONICS, INC. by them;

3 4. That right to commercialize said vector generating
4 system was, in turn, licensed to the defendants herein by
5 plaintiff which license is evidenced by a "Mutual Cross License
6 and Royalty Agreement," a true and correct copy of which is
7 attached hereto as Exhibit "B" and incorporated by reference
8 herein.

9 5. Said agreement provided for, inter alia, the payment
10 of certain royalties to plaintiff for the use of its system.
11 Since the inception of the agreement no royalties have been
12 paid nor has any accounting been made, ^{with the exception of one} \$17,000 payment paid 2/27/60.

13 6. I am, of course, without personal knowledge as to the
14 exact number of systems that have been commercialized by the
15 defendants since they have failed to account to plaintiff
16 therefor, although I am informed and believe and thereupon
17 declare that said system has, indeed, been commercialized by
18 the defendants, and each of them.

19 7. Said Exhibit "B" permits both plaintiff and defendants
20 to manufacture, distribute and otherwise commercialize items
21 licensed to the other, that is, to compete in those items, both
22 as to their sale and manufacture. If the defendant is permitted,
23 or either of the defendants, to manufacture and distribute and
24 otherwise commercialize the items licensed by plaintiff to them,
25 without accounting and paying the plaintiff as provided in said
26 Exhibit "B", defendant will be enabled to exploit the selling
27 field of the items, secure distributors, flood the market, and
28 make ineffectual the efforts of plaintiff to manufacture and

distribute the items itself.

8. The monies that are due to plaintiff and that will
2 become progressively due under the agreement are needed and
3 necessary to enable plaintiff to carry on its own business
4 and, if it does not receive them, it will be irreparably damaged
5 in that defendants, and each of them, will secure a monopoly
6 or so narrow the field in which plaintiff can sell as to make the
7 operation of its ^{own} business impossible.
8

9 9. Exhibit "B" provides for, inter alia, the granting of
10 injunctive relief upon a showing of failure to pay royalties
11 and I hereby expressly declare that no royalties have been
12 paid under the agreement, except as noted in paragraph 5 hereof.

13. In addition, as part of the same transaction a
14. promissory note was executed by the defendants in favor of
15. plaintiff which note remains unsatisfied as alleged in the
16. verified complaint on file herein.

17 I declare under penalty of perjury that the foregoing is
18 true and correct to the best of my knowledge and that this
19 declaration was executed at San Diego, California this 22nd
20 day of April, 1980. 

San Diego, California this 22nd

JAMES PIERCE
President, By and on Behalf of
Cinematronics, Inc.

MUTUAL CROSS LICENSE AND ROYALTY AGREEMENT

THIS AGREEMENT, effective November 30, 1979, by and between CINEMATRONICS, INC., a California Corporation, THOMAS B. STROUD, JR., and JIM PIERCE, hereinafter referred to as "CINEMATRONICS"; and EXIDY, INC., a California corporation, and VECTORBEAM, a California corporation, hereinafter collectively referred to as "EXIDY";

WHEREAS, Messrs. Stroud and Pierce own certain patents (U.S. Patents No. 4,027,148 issued May 31, 1977 and No. 4,053,740 issued October 11, 1977) concerning a vector generator and video game system (the "Rosenthal System"); and

WHEREAS, Stroud and Pierce have licensed Cinematronics, Inc., a California corporation, to use the Rosenthal System in exchange for certain royalties; and

WHEREAS, Stroud and Pierce own a majority of Cinematronics common shares; and

WHEREAS, Cinematronics has developed and copyrighted certain designs, trade names, software programs, etc., utilizing the Rosenthal System; and

WHEREAS, Cinematronics wholly owns and has sub-licensed Vectorbeam, a California corporation, in the use of the Rosenthal System and the proprietary and copyright products of Cinematronics; and

WHEREAS, Exidy desires to purchase and Cinematronics desires to sell Vectorbeam; and

Philip Seymour DeCaro

A LAW CORPORATION
30 CIERVO ROAD
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TELEPHONE (415) 881-2880

Exhibit "B"

WHEREAS, Exidy--through Vectorbeam or any other wholly owned subsidiary--or directly itself, desires to manufacture video games using the Rosenthal System and the Cinematronics developments in a game commonly known as "Tail Gunner" generally introduced to the market in November 1979 on the terms and conditions set forth below; and

WHEREAS, Exidy is developing its own X-Y Vector Generator (the Exidy System) that will not be in violation of the two patents (the Rosenthal System); and

WHEREAS, Cinematronics and/or any other corporation owned 90% or more by Cinematronics and/or by Messrs. Pierce and Stroud or their immediate family, may desire to manufacture video games using the "Exidy System"

NOW THEREFORE, all agree as follows:

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1. LICENSE:

(a) Non-Exclusive Cross Licensing of Respective Hardware Systems: Both Cinematronics and Exidy are mutually granting the other non-exclusive rights to use the hardware of their respective vector generator systems in video games. Neither Cinematronics nor Exidy may transfer or assign any rights whatsoever to use, market, sell or otherwise commercialize the other's vector generating system except to wholly owned subsidiaries or corporations 90% or more owned by the present shareholders of Cinematronics and Exidy.

(b) Cross-Licensing of Software Game Systems: With this agreement, Cinematronics agrees Exidy may manufacture, market and sell all games previously manufactured, marketed or sold by Vectorbeam except that "Tail Gunner" should only be manufactured, marketed or sold in a sit-down version with a general "Starfire" configuration as distinct from either the upright cabinet or "kit" versions of "Tail Gunner" Cinematronics is manufacturing. This license of the Tail Gunner game to Exidy is exclusive for the sit down version except as to pre-existing rights Sega

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has to manufacture, market and sell the game "Mill Gunner" in Japan. In future, neither Exidy nor Cinematronics will have any right to manufacture, use, market, or sell the software and related games developed by the other on either hardware system without a specific agreement relating to that game.

(c) Independent Software Development: During this Agreement, both Cinematronics and Exidy shall continue to have the right to develop its own software programs substantially incorporating either vector generating hardware system, and each shall pay a royalty for hardware use only as set forth below. Except as set forth in (a) above, this license, whether exclusive or nonexclusive, specifically does not include the right to grant sublicenses for this software upon any terms whatsoever without the prior written consent of the licensor.

(d) No Restriction on Sale of Shares or of Company: Restrictions applying to the sale, assignment, or subleases of the other party's vector system, etc., are not intended to, and do not, in any way restrict the transfer or assignment of the shares or ownership of either Exidy or Cinematronics.

2. PATENTS:

(a) For the Rosenthal System: All Letters Patent issued or copyrights (except trademarks, software, and game names developed or copyrighted by Exidy) on the Rosenthal System and its improvements shall be the exclusive property of Cinematronics, subject to this license. There is no sale, transfer, assignment or pledge of any patent rights or patent application under this License Agreement. Exidy shall, without further consideration, at the request of Cinematronics, do all acts necessary for Cinematronics to obtain, sustain, reissue, or extend any Letters Patent and both parties shall give testimony, provide other evidence, and fully cooperate in any cases of interference or infringement, abuse or misuse.

(b) For the Exidy System: All Letters Patent issued or copyrights (except trademarks, software, and game names developed

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or copyrighted by Cinematronics) on the Exidy System and its improvements shall be the exclusive property of Exidy, subject to this license. There is no sale, transfer, assignment or pledge of any patent rights or patent application under this License Agreement. Cinematronics shall, without further consideration, at the request of Exidy, do all acts necessary for Exidy to obtain, sustain, reissue, or extend any Letters Patent and both parties shall give testimony, provide other evidence, and fully cooperate in any cases of interference or infringement, abuse or misuse.

3. LICENSE TERM:

Subject to the other provisions of this agreement, the license term shall be for three (3) years, commencing December 1st, 1979 and ending on November 30th, 1982. This License Agreement may only be extended or amended by an agreement in writing executed on or before November 30th, 1982.

Provided this Agreement is not earlier terminated and in the event this License Agreement is not extended beyond November 30th, 1982, both parties realize and agree that each may have unfilled orders for games using the others' vector system received prior to November 30th, 1982 but not yet filled. To be fair to each and to customers, both parties agree to allow the other to continue to manufacture and ship after November 30th, 1982 to fill written purchase orders actually received prior to December 1, 1982. However, all such pre-December 1, 1982, orders must be filled prior to February 28th, 1983. After February 28, 1983, each realizes and agrees it will have no rights whatsoever to manufacture, use, market or sell the vector system of the other, regardless of the date of the original order. Each shall continue to be responsible for all warranty or damage claims for all units it manufactured, marketed, or sold and shall hold the other harmless.

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from any such claims.

4. ROYALTIES: Each shall pay and deliver to the other royalties calculated as follows:

(a) On "Tail Gunner", Exidy will pay Cinematronics an amount equal to five (5%) percent of the net sales price per unit but not be to less than \$100 nor more than \$120 per unit. In the future, each party will pay the other on units sold which include both substantial software developed by the other and the other's vector generating hardware system, an amount equal to five (5%) percent of the net sales price per unit.

(b) An amount equal to two and one-half (2-1/2) percent of the net sales price per unit on all units sold which incorporate only substantial portion of the other's vector generating hardware system.

(c) Special royalty agreement for Vectorbeam inventory and finished games such as Barrier, Speed-Freak, Space War and Warrior: The assumed costs of finished goods in inventory and Warriors being built is \$1,100.00 per unit. The marketability of these games is uncertain and fire sales or close-outs at reduced prices may be commercially reasonable for Exidy. Exidy and Cinematronics agree that there shall be no royalty due on these games unless any of these games are sold for a net price of more than \$1,300.00 per unit. If these games are sold for a net sales price in excess of \$1,300.00 per unit, the first two hundred dollars in excess of \$1,300 per unit shall be equally divided for a maximum of \$100.00 to Cinematronics. This special royalty agreement only applies to games in production prior to December 15, 1979 and shall be payable on or before February 1st, 1980.

(d) All royalties will be computed and paid on the sales price less discounts and allowances, sales tax, and freight, if any (net sales price). The royalty due will not be diminished by any trade-in

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allowance or any other credits whatsoever. If a unit is sold and the customer returns the unit for any reason, the royalty will still be fully due and payable. Any unit once sold and upon which a royalty was properly paid shall not, upon resale, require another royalty payment. Discounts and allowances, etc., or "no-royalty" resales shall all be in the normal course of business and shall not be or become such a proportion of total sales as to artificially diminish the royalty payments while not affecting the true compensation being received.

5. PAYMENT OF ROYALTIES:

Both parties shall, at all times, keep an accurate account of all operations under the scope of this cross license. The party using the other's vector generating system and/or games shall render written statements to the other within fifteen (15) days

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after each month during the term of this Agreement, and shall pay to the other with each statement the amount of all royalties due for sales during the preceding month. Each royalty report shall contain, at a minimum, a detailed list of all units shipped with serial number and the price for which each unit was sold. A party due royalty payments shall have the right, during normal business hours at the other's principal offices, to examine and audit books and records for the purpose of verifying the correctness of the royalty statements and royalty payments. Each shall have the right to employ and appoint agents to conduct these examinations and audits.

Each shall have the right to make extracts or copies of any books or records relating to this License, pursuant to these audits or examinations. Both shall fully cooperate with the other or its agents conducting these audits or examinations including access to in-house copy machines, providing requested books and records, and answering reasonable inquiries or questions.

If errors of more than three (3%) percent are disclosed as a result of such audit or examination, all of the reasonable costs of the examination or audit shall be borne by the party who made the error. This audit expense, in addition to the additional royalties due, shall be immediately due and payable.

6. OTHER LICENSES OF EITHER ROSENTHAL OR EXIDY SYSTEMS: By this agreement, neither Cinematronics nor Exidy is restricted or limited in licensing others for their own systems or games on their own systems, unless there is a specific agreement to the contrary such as the specific agreement on "Tail Gunner". Neither Exidy nor Cinematronics, as the licensee, shall have any right to sublicense or to use or apply the other's system to any use or application other than video games without specific written agreement.

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7. ADDITIONAL COVENANTS: Whenever either party is using the system of the other, that party covenants as follows:

(a) It shall in good faith and with diligence conduct all manufacturing, marketing, sales and other operations in accordance with the best business customs of the video game industry;

(b) It shall in good faith and with diligence honor and fulfill all legitimate warranty claims;

(c) If it shall enter into any authorized sublicense, and the sublicensee shall be allegedly violating the sublicensing agreement or making unauthorized use of the vector generating system (whether before or after December 1, 1982), the party who contracted with the sublicensee shall, at his or its own cost and expense, diligently pursue the alleged transgressor;

(d) Except as specifically agreed, it shall not assign, sell or transfer, directly or by operation of law, any of its rights under this Agreement. The party acting as licensor may, at its option, immediately terminate this Agreement and all rights of the party acting as licensee if the licensee voluntarily or involuntarily is adjudicated a bankrupt; petitions the Bankruptcy Court under the provisions of Chapter X, XI, or XII of the Federal Bankruptcy Act (or successor provisions as amended); attempts an informal composition of creditors; or attempts to assign, sell or transfer any of LICENSEE'S rights under this Agreement. Nothing in this provision is meant to restrict or prevent the sale of either Cinematronics or Exidy shares or the corporation by its principal shareholders;

(e) Whenever authorized, each party shall within fifteen (15) days disclose to the other all sublicensing agreements executed and further each shall provide the other with a true and correct conformed copy of all sublicense agreements; and

(f) The party who manufactures and sells a video game

shall be solely responsible for all warranty or service work on all its units and shall hold the other harmless from all such claims.

8. MUTUAL WARRANTIES:

Neither party shall take any action to attempt to circumvent this License Agreement. For instance, neither shall set up or associate with sales entities to whom it would sell units at a reduced price thus attempting to diminish the royalty.

9. INFRINGEMENTS:

(The following paragraph applies to both parties--if the Rosenthal System is at issue, read "Exidy" for licensee. Alternatively, if the Exidy System is at issue, read "Cinematronics" for licensee.)

In the event LICENSEE shall independently desire to initiate any suit involving an infringement claim, LICENSEE must have prior written consent of LICENSOR to bring the action. Once LICENSEE has the written consent, LICENSEE will thereafter control the lawsuit except that under no circumstances may LICENSEE allow a default or stipulated judgment invalidating the LICENSOR's patents. In any such case being brought by LICENSEE, LICENSOR always retains the right to intervene to take all steps necessary to protect LICENSOR's patent and patent rights. In all other litigation LICENSOR shall retain all rights to bring, settle or terminate any infringement suit based on LICENSOR's patent rights. Both parties agree to fully cooperate with the other and its agents and attorney in any such litigation and will not join with any opponent challenging any patent or copyright which is subject to this agreement.

10. AGREEMENT TO HOLD THE VECTOR SYSTEMS, SOFTWARE,
ETC., CONFIDENTIAL:

Either party when acting as Licensee agrees that all experiments, developments, formulas, patents, devices, schematics, software, secret inventions, and compilation of information, records and specifications regarding the other's Vector generating system, related software or proposed games are trade secrets which shall not be disclosed, directly or indirectly, either during the term of this Agreement or at any time thereafter, except as required to manufacture, market or sell video games, or under enforcement provisions of this Agreement.

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Exidy agrees to accept Rosenthal's System in its present form and agrees that the Rosenthal System functions and performs without any changes or modifications being required of Cinematronics. Cinematronics need do absolutely nothing more -- either in design, documentation, manuals, engineering, or whatever -- to be absolutely and irrevocably entitled to all royalty payments as set forth elsewhere in this Agreement.

Exidy agrees that as it has not yet fully developed the Exidy vector generating system, and this system has not yet been tested and proven, that when this system is put in production with Exidy, Cinematronics may then exercise its rights under this cross license and Exidy agrees to provide reasonable documentation and engineering assistance to allow Cinematronics to make commercial use of the Exidy system. This includes, but is not limited to, reasonable instruction on program development and meaningful assistance in developing a development system or cross assembler for programing the Exidy vector system.

11. SPECIAL PROVISIONS RE TAIL GUNNER PRODUCTION:

There are special restrictions and considerations concerning "Tail Gunner". Exidy has agreed to manufacture, market and sell only "sit-down" versions of Tail Gunner. Exidy has further

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agreed to maintain a generally advertised distributor price of at least Two Thousand (\$2,000.00) Dollars, i.e. approximately One Hundred Twenty-five (125%) percent of the normal distributor price Cinematronics charges for "Tail Gunner" uprights unless Exidy is having a "final close-out" of a limited number of units.

Cinematronics, for its side, has agreed to provide--on a real time, current basis--Exidy with parts as needed by Exidy to allow Exidy to manufacture twenty (20%) percent of the Cinematronics production. Cinematronics will have this obligation from December 1st, 1979 through February 28, 1980. Exidy agrees that it will not demand any components from Cinematronics that Exidy already has in stock or which are currently available from a vendor. Cinematronics will cooperate in permitting vendors to sell game specific parts to Exidy. Neither party will attempt to "lock up" vendors or supplies or deny the other a fair share (80-20 is *prima facia* "fair"). If Exidy acquires parts through Cinematronics, Exidy will pay for those parts on the same terms Cinematronics is required to meet by the vendors of those parts. This is one of those provisions in any contract where the good faith and reasonableness of both parties is critical and the spirit--not the letter--of the provision should apply.

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12. BOTH PARTIES AGREE TO PAY ROYALTIES ON TIME: Prompt payment of all royalties is essential and critical. If royalties are not timely paid, then in addition to all other legal rights, each party as licensor shall have the right after hearing to injunctive relief, both preliminary and permanent, to stop the further sale, manufacture, or delivery of its vector system by the other. Both parties agree the Court may issue an injunction without any showing that this injunctive relief is necessary to protect royalty payments. Non payment alone shall be grounds to terminate all rights of the delinquent licensee but shall not terminate the non-delinquent party's rights to the vector system of the delinquent party. A Court may issue any injunction without requiring a bond.

13. NOTICES:

Any notice or payment required under this Agreement may be addressed as follows, by U.S. Mail, postage prepaid:

EXIDY, INC.
390 Java
Sunnyvale, CA 94086

CINEMATRONICS, INC.
1466 Pioneer Way, Suite 6
El Cajon, CA 92020

14. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement and

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understanding between the parties and supersedes all prior agreements and understandings, whether written or oral. No modification or claimed waiver of any of the provisions hereof shall be valid unless in writing and signed by the party against whom such modification or waiver is sought to be enforced.

15. COUNTERPARTS:

This Agreement may be executed in two or more counterparts and, as so executed, shall constitute one Agreement binding on all parties, even if all parties do not sign the original of the same counterpart.

16. GOVERNING LAW:

This Agreement is executed and intended to be performed in the State of California, and the laws of that state shall govern its interpretation and effect.

17. VENUE:

The parties hereto agree that the Superior Courts of the Counties of Santa Clara and San Diego shall be courts of competent jurisdiction for enforcement of the terms and provisions of this Agreement.

18. ATTORNEYS' FEES:

In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or any breach thereon, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs.

19. PARTIAL INVALIDATION:

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force, without being impaired or invalidated in any way.

20. RIGHT TO ENJOIN VIOLATIONS:

Both parties agree that in addition to all other remedies each may have for the other's breach of this Agreement, each shall have the right to request of a court of competent jurisdiction

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injunctions to enjoin the other from violating the covenants and conditions of this Agreement.

21. EXCHANGE OF TECHNOLOGY:

Certain modifications and/or changes ("improvements") have been and will be made to the vector generating systems. Whoever makes future hardware improvements will immediately make them available to the other without charge or cost. At the termination of this agreement, or any written extension, which ever party owns the basic system shall have the exclusive right to all such changes, improvements and/or modifications.

22. NO RESTRICTION ON "LICENSOR" ASSIGNMENT:

Cinematronics for the Rosenthal System and Exidy for the Exidy System may elect without any restrictions whatsoever to assign, sell, hypothecate, or transfer this agreement in whole or in part without the consent or approval of the other. However, whoever is acting as licensee shall continue to make all royalty payments to Lessor unless and until licensee receives written directions from Lessor to make the royalty payments to some other person or entity.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective the date first above written.

Dated: 12/5/79

CINEMATRONICS, INC.

By: Jim Pierce
JIM PIERCE, President

Dated: 12/5/79

By: Thomas B. Stroud, Jr.
THOMAS B. STRoud, JR.

Dated: 12/5/79

Comments: This Sublease is, inter alia,

By: Jim Pierce
JIM PIERCE

Dated: 12/5/79

By: Thomas B. Stroud, Jr.
THOMAS B. STRoud, JR.

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EXIDY, INC.

Dated: 12/5/79

By: H.R. Koffman
H. R. "Peter" KOFFMAN

Dated: 12/5/79

By: Howell A. Ivy
HOWELL A. IVY

VECTORBEAM

Dated: 12/5/79

By: Jimmie Denton
JIMMIE DENTON

Dated: 12/5/79

By: Thomas H. Camp, Jr.
THOMAS H. CAMP, JR.

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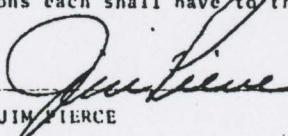
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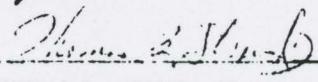
OFFICER AND PRINCIPAL SHAREHOLDER AGREEMENT

The undersigned, being the officers and principal shareholders of Cinematronics and Exidy, have each read the foregoing Mutual Cross License and Royalty Agreement and understand and approve its terms. The undersigned will not use, form or attempt to form another business entity utilizing the information on the other's products acquired under this agreement to avoid or attempt to avoid the restrictions placed on each in this license agreement or the royalty or other obligations each shall have to the other.

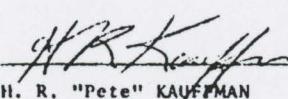
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JIM PIERCE

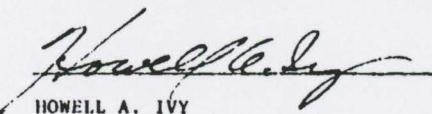
Dated: 12/5/79


THOMAS B. STROUD, JR.

Dated: 12/5/79


H. R. "Pete" KAUFFMAN

Dated: 12/5/79


HOWELL A. IVY

Dated: _____

Philip Seymour DeCaro

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